

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA**

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DOUGLAS N. GAER, Individually And  
On Behalf All Others Similarly Situated,

Plaintiff

v.

EDUCATION MANAGEMENT CORP., TODD  
S. NELSON, EDWARD H. WEST, JOHN R.  
MCKERNAN, JR., PAUL J. SALEM, ADRIAN  
M. JONES, JEFFREY T. LEEDS, PETER O.  
WILDE, LEO F. MULLIN, GOLDMAN, SACHS  
& CO., J.P. MORGAN SECURITIES, INC.,  
MERRIL LYNCH, PIERCE, FENNER & SMITH  
INC., BARCLAYS CAPITAL INC., CREDIT  
SUISSE SECURITIES LLC., and MORGAN  
STANLEY & CO. INC.,

Defendants.

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CIVIL ACTION NO.  
2:10-cv-01061-RCM

**PLAINTIFFS' MOTION FOR LEAVE TO FILE A RESPONSE TO EDUCATION  
MANAGEMENT CORPORATION'S, INDIVIDUAL DEFENDANTS', AND  
UNDERWRITER DEFENDANTS' SUPPLEMENTAL BRIEF IN SUPPORT OF  
MOTIONS TO DISMISS, AND IN OPPOSITION TO DEFENDANTS' REQUEST  
FOR JUDICIAL NOTICE**

Lead Plaintiff Oklahoma Police Pension and Retirement System and plaintiff  
Southeastern Pennsylvania Transportation Authority (collectively, "Plaintiffs")  
respectfully request leave of Court to file the attached Response to Education  
Management Corporation's, Individual Defendants', and Underwriter Defendants'  
(collectively, "Defendants") Supplemental Brief in Support of Motions to Dismiss and in  
Opposition to Defendants' Request for Judicial Notice.

On June 6, 2011, Defendants filed a Motion for Leave to File a Supplemental Brief and Request for Judicial Notice (Doc. 88) to address regulations adopted by the United States Department of Education on June 2, 2011. Leave to file was granted by the Court on June 7, 2011.<sup>1</sup> (Doc. 89).

Plaintiffs seek leave to file the attached three-page response to address the arguments raised by Defendants in their Supplemental Brief and to oppose Defendants' Request for Judicial Notice. Good cause exists since plaintiffs have not yet had any opportunity to address Defendants' new arguments.

WHEREFORE, in light of this Court's allowance of the filing of Defendants' Supplemental Brief and Request for Judicial Notice, Plaintiffs respectfully move the Court to grant Plaintiffs' leave to file its response to Defendants' Supplemental Brief and opposition to their Request for Judicial Notice, attached hereto.

Dated: June 14, 2011

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<sup>1</sup> It is not clear from the Court's Order whether the Supplemental and Request for Judicial Notice has been deemed filed. For purposes of this Motion, Plaintiffs treat them as filed.

BERMAN DEVALERIO

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*LEAD COUNSEL FOR PLAINTIFFS*

**CERTIFICATE OF SERVICE**

I hereby certify that on June 14, 2011, I electronically filed the foregoing Plaintiffs' Motion For Leave To File A Response To Education Management Corporation's, Individual Defendants', And Underwriter Defendants' Supplemental Brief In Support Of Motions To Dismiss, And In Opposition To Defendants' Request For Judicial Notice with the Clerk of Court using the CM/ECF system which will send notification of such filing to all registered users.

/s/ Timothy N. Mathews  
Timothy N. Mathews